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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/292,286 08/18/94 STANLEY

M 56292

EXAMINER

GARBE, S

ART UNIT

PAPER NUMBER

32M1/0714

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3207

DATE MAILED:

07/14/95

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined  Responsive to communication filed on \_\_\_\_\_  This action is made final.

A shortened statutory period for response to this action is set to expire \_\_\_\_\_ month(s), 30 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

1.  Notice of References Cited by Examiner, PTO-892.
2.  Notice of Draftsman's Patent Drawing Review, PTO-948.
3.  Notice of Art Cited by Applicant, PTO-1449.
4.  Notice of Informal Patent Application, PTO-152.
5.  Information on How to Effect Drawing Changes, PTO-1474..
6.  \_\_\_\_\_

**Part II SUMMARY OF ACTION**

1.  Claims 1 - 20 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2.  Claims \_\_\_\_\_ have been cancelled.

3.  Claims \_\_\_\_\_ are allowed.

4.  Claims \_\_\_\_\_ are rejected.

5.  Claims \_\_\_\_\_ are objected to.

6.  Claims 1 - 20 are subject to restriction or election requirement.

7.  This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8.  Formal drawings are required in response to this Office action.

9.  The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are  acceptable;  not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10.  The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been  approved by the examiner;  disapproved by the examiner (see explanation).

11.  The proposed drawing correction, filed \_\_\_\_\_, has been  approved;  disapproved (see explanation).

12.  Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has  been received  not been received  been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.

13.  Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14.  Other

**EXAMINER'S ACTION**

### **Part III DETAILED ACTION**

1. Claim 1 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "warning flag means" is indefinite because it cannot be determined what its scope is. Does a "warning flag means" require a warning flag? If so, how does "means" affect its scope or meaning? If not, why is "warning flag" part of this phrase?

2. Claims 2, 3, 5, 6, and 16-18 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are indefinite as claim 1 since they inherit its defects. Furthermore, the phrase "closure means" in claim 3 should be changed to "closing means" to comply with *Ex parte Klumb*, 159 USPQ 694.

3. Claim 19 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This claim is indefinite because the top of the bag is referred to as being "open" while the claimed structure requires it to be closed. It is inaccurate to refer to a closed bag top as "open." Furthermore, the phrase "and/or" is alternative.

4. Claim 20 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This claim is indefinite as claim 19 since it inherits its defects.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claim 1 is rejected under 35 U.S.C. § 102(b) as being anticipated by Schamblin. Schamblin discloses all claimed features including a warning flag 40 which includes a bag 41, access opening 52, rigid members 67 extending along the top edge of the bag, and a securing means 20.

7. Claims 1-3, 5 and 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by Luttrell.

Luttrell anticipates all structural features required by these claims including a rigid member 22 and a securing means comprising element 25 and/or element 27. The phrase "warning flag" imparts no structure to the claimed device. It is merely an intended use limitation.

8. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

9. Claim 19 is rejected under 35 U.S.C. § 103 as being unpatentable over Lyon.

The storage bag illustrated in Figure 3 includes all claimed features except for the PVC plastic material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use PVC plastic to make Lyon's bag because it is for underwater use and because PVC plastic is known for its water resistance.

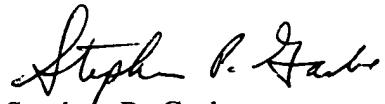
10. Claims 16-18 and 20 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112 and to include all of the limitations of the base claim and any intervening claims.

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11. Applicant's election of the species illustrated in Figures 8-11 without traverse is noted.
12. Claims 4 and 7-15 have been withdrawn from consideration under 37 CFR 1.142(b) as not being drawn to the elected species.
13. The remaining patents are cited to further show the state of the art.
14. Facsimile correspondence for this application should be sent to (703) 305-3579. Any inquiry concerning this communication should be directed to Stephen Garbe at telephone number (703) 308-1207.



Stephen P. Garbe  
Primary Examiner  
Art Unit 3207